



January 9, 2002

Ms. Cathy Bradford  
Open Records Coordinator  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2002-0162

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157295.

The Texas Parks and Wildlife Department (the "department") received a request for data submitted for the department's Scientific Breeder's Permit applications for those who have been approved and are currently licensed in Hidalgo and Starr Counties. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 12.0251 of the Parks and Wildlife Code controls the disclosure of information that the department collects in the course of providing technical guidance to private landowners. This statute provides:

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(b) The commission or the department may disclose information described by this section only to the landowner unless:

(1) the landowner consents to full or specified partial disclosure of information; and

(2) the consent is in writing and is attached to the plan or recommendation report.<sup>2</sup>

(c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.

(d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is

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<sup>2</sup> You advise that you are releasing the partial information of landowners participating in the breeder's program who have provided such consent.

revoked. The department may retain a copy of the information if the landowner consents in writing.

(f) In this section, a reference to the department includes a reference to an agent of the department.

(g) This section does not apply to a parcel of land that is not privately owned.

Parks & Wild. Code § 12.0251 (footnote added). This statute makes confidential information that the department collects in response to a landowner request relating to the specific location, species identification, or quantity of certain animals and plants. You state that the requestor seeks applications submitted to the department for permits in order to possess, transport, and breed deer, which are protected animals under the Parks and Wildlife Code. Based on our review of the submitted information, we conclude that it relates to a request made to the department by a landowner relating to a species of animal protected by the Parks and Wildlife Code on a specific location of private land. Therefore, all of the information that was collected by the department in relation to this landowner request must be withheld under section 12.0251(a) of the Parks and Wildlife Code. However, the submitted Captive White-Tailed Deer Plan and Protocols may be released only in accordance with section 12.0251(c).

You request a "previous determination" from this office that would be applicable to future requests for information contained in applications for scientific breeders permits. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 157295

Enc. Submitted documents

c: Mr. J. L. Garza  
201 Donaldson Avenue  
San Antonio, Texas 78201  
(w/o enclosures)